THE HON'BLE Ms. JUSTICE G.ROHINI

COMPANY APPLICATION No.9 OF 2011
AND
COMPANY APPLICATION No.555 OF 2011
IN
COMPANY PETITION No.26 OF 2006

Dated: 02.02.2011

Between:

M/s. Sai Priyadarshini Estates Limtied

..... Applicant

The Court made the following:-

THE HON'BLE Ms. JUSTICE G. ROHINI

COMPANY APPLICATION No.9 OF 2011

AND
COMPANY APPLICATION No.555 OF 2011
IN
COMPANY PETITION No.26 OF 2006

COMMON ORDER:

The Official Liquidator attached to this Court representing M/s. Sai Priyadarshini Estates Limtied, the company in liquidation is the applicant in these two applications.

C.A.No.9 of 2011 is filed under Section 460 (4) of the Companies Act read with Rule 167 of the Companies (Court) Rules, 1959 to condone the delay in filing the Certificate in Form No.71 with respect to the adjudication of claims of the unsecured creditors of the company in liquidation and to take the said certificate on record.

C.A.No.555 of 2011 is filed to declare a dividend to the unsecured creditors of the company in liquidation and for other reliefs as under:

i. declare a dividend @ 32.186354% in a rupee aggregating to a sum of Rs.19,93,883/- to unsecured creditors in respect of realisation of all the assets of the company as detailed in the statement marked as Annexure-B.
ii. authorise Official Liquidator to open a separate dividend account in Punjab National Bank and pay the dividend to the unsecured creditors out of the said account, in terms of Rule 290 of the Companies (Court) Rules, 1959.
iii. dispense with the publication of notice of dividend in newspapers.
iv. authorise Official Liquidator to send individual notices of dividend in Form No.138.
v. authorise Official Liquidator to fix the schedule for making payment.
vi. authorise Official Liquidator to transfer the un-paid dividend, if any, remaining in the dividend account, after the expiry of the 6 (six) months period to Companies Liquidation Account, in terms of Section 555 of the Companies Act, 1956.
vii. Authorise Official Liquidator to pay dividend due to any deceased creditor to his legal heirs upon production by such legal heirs, family member certificate or such other certificate as issued by the Revenue Authority instead of producing a succession certificate and also upon furnishing personal indemnity, in terms

of Rule 280 of the Companies (Court) Rules, 1959.

viii. authorise Official Liquidator to take all necessary actions and steps which are incidental to declaration and payment of dividend and to effectively implement the orders of this Hon'ble Court in that regard.

ix. order that the costs of this application do come out of the Estate of the company (In Liqn.)."

I have heard Sri M. Anil Kumar, the learned counsel for the Official Liquidator.

A perusal of the material available on record shows that M/s. Sai Priyadarshini Estates Limited was directed to be wound up by this Court by order dated 17.07.2006 made in C.P.No.26 of 2006 and the Official Liquidator attached to this Court was appointed as its Liquidator. Pursuant thereto, having taken possession of the assets of the company, the Official Liquidator sold the same. Thereafter, in terms of the order passed by this Court dated 01.07.2008 made in C.A.No.622 of 2008, the Official Liquidator invited the claims from the creditors of the company in liquidation by publishing a notice in Form No.63 in the newspapers dated 01.08.2008 fixing the last date for receipt of claims as 15.09.2008. In response to the same, 310 claims were received by the Official Liquidator within the last date fixed for the respective claims. That apart 84 belated claims were also received from the depositors. By order dated 17.10.2008 in C.A.No.1093 of 2008 this Court permitted the Official Liquidator to receive and process the belated claims also. Similar order was passed in C.A.No.73 of 2009, dated 06.02.2009 to receive and process some more belated claims received from the claimants. In the said order, while directing to finalise the adjudication process within a maximum period of six months, this Court also directed to adjudicate any of the belated claims received until the certificate in Form No.71 is taken on record. Accordingly, some more belated claims were also adjudicated by the Official Liquidator.

It is submitted by the Official Liquidator that majority of the

claimants did not submit the relevant proofs and therefore, reminders had to be issued several times advising the claimants to submit their proofs. The Official Liquidator had also addressed a letter to the Ex-Managing Director of the company in liquidation to furnish clarifications in respect of certain claims. On receipt of such clarifications vide letters dated 25.02.2010, 25.06.2010 and 03.09.2010, the Official Liquidator completed the adjudication of all the claimants and individual orders were communicated to the claimants on 03.12.2010. Immediately thereafter the certificate in Form No.71 has been filed before this Court. While stating that the delay of 755 days in filing the Form No.71 Certificate is only due to the aforesaid reasons and it is neither wilful nor wanton, the Official Liquidator seeks to condone the delay.

It is also explained by the Official Liquidator that as on date a sum of Rs.20,33,256.41 ps. is available to the credit of the company in liquidation. While proposing to declare and disburse dividends to the entitled creditors of the company out of the said amount available, a detailed statement of the particulars of the amounts available for dividend and proposed distribution are furnished in Annexure-B enclosed to these applications. The statement showing the amounts available to the credit of the company in liquidation and the proposed dividends to each individual unsecured creditor is enclosed as Annexure-C. Thus, the Official Liquidator also seeks the permission of this Court as required under Rules 275 and 276 of the Companies (Court) Rules, 1959 to declare and disburse the dividends to the entitled creditors and for other consequential reliefs including dispensing with the publication of dividends notice in newspapers. The Official Liquidator also seeks permission to open a separate dividend account to declare and disburse dividends to the entitled creditors of the company.

The learned Counsel representing the Official Liquidator submits that the proposals to declare and disburse the dividend as per

the particulars furnished in Annexures-B and C are in order. Hence, there can be no impediment to grant the permission as sought by the Official Liquidator for declaring and disbursing the dividends to the entitled creditors of the company in liquidation.

So far as the delay in filing the certificate in Form No.71 is concerned, the explanation offered by the Official Liquidator in the affidavit shows that the delay was occasioned for genuine reasons and there is no reason to hold that the delay had occurred in the office of the Official Liquidator deliberately or on account of negligence. Rule 167 read with Rule 7 of the Companies (Court) Rules, 1959 confers very wide powers for enlarging the time fixed by the rules to meet the ends of justice. It is also relevant to note that the condonation of the delay in the present case does not adversely affect the rights of any of the parties, but on the other hand it would enable the winding up proceedings to reach the logical conclusion. Hence, I deem it appropriate to condone the delay in filing the Certificate in Form No.71.

Accordingly, the delay in filing the Certificate in Form No.71 is hereby condoned and the said certificate is taken on record with a direction to the Registrar to notify the same as provided under Rule 169 of the Companies (Court) Rules, 1959.

In the result, both C.A.No.9 of 2011 and C.A.No.555 of 2011 are allowed as prayed for.

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G. ROHINI, J

Dt. 02.02.2011
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